Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12584/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th July 2019	**On 5th September 2019**

Before

THE VICE PRESIDENT, MR. C M G OCKELTON
and
UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MD GULAM KIBRIA CHOWDHURY

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr R Sharma, Counsel instructed by Capital Solicitors

DECISION AND REASONS

1. The appellant in the appeal before us is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is Mr Chowdhury. However, for ease of reference, in the course of this decision we adopt the parties' status as it was before the FtT. We refer to Mr Chowdhury as the appellant, and the Secretary of State as the respondent.

2. The appellant is a national of Bangladesh. He appears to have entered the United Kingdom on 20th August 2005 with a work permit valid until 16th August 2006. He remained in the United Kingdom unlawfully when his leave to enter came to an end. On 18th November 2016 he was encountered working illegally, and on 24th November 2016, he made a claim for leave to remain based on the family life that he has established with his partner, [HB].

3. The appellant's claim for leave to remain on human rights grounds was refused by the respondent for the reasons set out in a decision dated 25th May 2018. In that decision, the respondent had regard to the evidence relied upon by the appellant and considered his claim, first by reference to the requirements set out in Appendix FM and paragraph 276ADE of the immigration rules. The respondent concluded that the applicant is unable to meet the requirements of the immigration rules. The respondent then concluded that there are no exceptional circumstances that would render a refusal of leave to remain, a breach of Article 8.

4. The respondent's decision gave rise to a right of appeal and the appellant's appeal was heard in the First-tier Tribunal by Judge Trevaskis on 17th October 2018. The appeal was allowed on human rights grounds for the reasons set out in a decision promulgated on 25th October 2018.

5. We pause to note at this juncture, that in his decision of 25th May 2018, the respondent accepted that the claim made by the appellant does not fall for refusal on grounds of suitability, and accepted that the appellant meets the requirements of paragraphs E-LTRP.1.2 - 1.12 of Appendix FM, that is, the relationship requirement. The respondent did not accept that the appellant meets the immigration status requirements set out at paragraphs E-LTRP.2.1 to 2.2 because the appellant has remained in the UK in breach of immigration laws.

6. The respondent considered whether the appellant could benefit from the exceptions to certain eligibility requirements for leave to remain as a partner, set out in section EX of Appendix FM. The relevant exception here, is set out in section EX.1(b) and

applies if the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK, and there are insurmountable obstacles to family life with that partner continuing outside the UK. The respondent considered the appellant's relationship with his partner [HB], and rejected his claim that there are insurmountable obstacles to the appellant's family life with his partner continuing outside the UK, in Bangladesh.

7. The decision of the respondent expresses no view on whether the financial requirements referred to in paragraph E-LTRP.3.1 are met by the appellant. The rules require the appellant to provide specified evidence from the sources listed in paragraph E-LTRP.3.2., of a gross annual income of at least £18,600. In the absence of a concession by the respondent that the requirement is met, it cannot be assumed that the requirement is met. The decision is also silent as to whether the English language requirement referred to at paragraph E-LTRP.4.1, is met. Paragraph E-LTRP.4.1 also requires that *"... If the applicant has not met the requirements in a previous application for entry clearance or leave to remain as a partner or parent, the applicant must provide specified evidence that they … passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for languages with a provider approved by the Secretary of State".* The appellant has been in the UK unlawfully since August 2006, and he has not met that English language requirement in a previous application for entry clearance or leave to remain as a partner.

<u>The decision of Judge Trevaskis</u>

8. The Judge heard evidence from the appellant and his sponsor. The findings and conclusions of the Judge are set out at paragraphs [28] to [52] of his decision. At paragraph [28] of the decision, the Judge states that he begins *"... by considering whether or not the appellant meets the requirements of the immigration rules because they reflect the respondent's view on proportionality…"* and *"... therefore, form an important part of the assessment of proportionality"*. At paragraph [29] of his decision, the Judge states*:*

> "The appellant satisfies the suitability requirements, relationship requirements, financial requirements, accommodation requirements and English language requirements of Appendix FM. These findings are based either upon concessions by the respondent, or on the basis of evidence which has now been provided by the appellant."

9. The Judge therefore proceeds upon the premise that all the eligibility requirements set out in Appendix FM, save for the immigration status requirement, are met by the appellant. The Judge records, at [30], as follows:

> "With regard to the immigration status requirement of Appendix FM, his inability to meet that requirement will not prevent him from meeting the rule, if he is able to satisfy EX.1(b). If the appellant these *(sic)* in a genuine and subsisting relationship with the sponsor, and there are insurmountable obstacles to their family life continuing outside the United Kingdom, then that requirement will be satisfied."

10. For the reasons set out at paragraphs [35] to [37] of his decision, the FtT Judge found that there are no insurmountable obstacles to the continuation of the appellant's relationship with his partner, outside the UK. The Judge noted, at [37], that the reality of the situation is that the sponsor will not accompany the appellant to Bangladesh, "*... but he will instead make an application for entry clearance to return to re-join her in the United Kingdom ...*". The Judge refers to a potential difficulty that he perceives the appellant may face in satisfying the requirements for entry clearance. The Judge states "*...he will face difficulty in regard to his immigration history, and in particular his overstaying since the expiry of his work permit. He will only be able to circumvent that difficulty if he can show insurmountable obstacles to family life continuing in Bangladesh. I conclude that his entry clearance application will not be bound to succeed.*". We will return to those observations made by the Judge, later in this decision.

11. At paragraph [38] of his decision, the Judge addressed the private life claim and concluded as follows:

> "… He was born in Bangladesh and lived there until he was 23 years old, when he came to the United Kingdom; he has never suggested that his decision to leave Bangladesh was for any reason other than economic benefit; he is socially and culturally integrated in that country, and no evidence has been provided which leads me to believe that he would not be able to integrate in that society if he returned there."

12. The Judge concluded at paragraph [39] that he is not satisfied to the required standard, that the appellant meets the requirements of the immigration rules for the grant of further leave to remain based upon his family or private life. At paragraphs [40] to [51] of his decision, the Judge addressed the Article 8 claim outside the rules by reference to the five stage approach referred to by the House of Lords in Razgar -v- SSHD [2004] UKHL 27, and adopting the "balance sheet" approach identifying the matters that weigh in favour of, and against the appellant in the assessment of proportionality. For the reasons identified at paragraphs [50] and [51] of the decision, the Judge found at paragraph [52], that the respondent's decision amounts to a disproportionate interference with the appellant's right to enjoyment of family and private life in the UK.

The appeal before us

13. The respondent advances several grounds of appeal, some of which are incoherent. At the outset of the hearing, Mr Melvin readily accepted that the grounds could have been better drafted, but in essence the respondent claims that having referred to the decision of the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11, the Judge irrationally concluded that the interference with the appellant's family life would be disproportionate, without identifying any exceptional circumstances capable of justifying that conclusion. Mr Melvyn maintains that the decision that the appellant is able to meet the minimum income requirement, is unfounded. Permission to appeal was granted in the First-tier Tribunal FtT Judge Simpson on 19th November 2018, and the matter comes before us on appeal.

14. There is a the Rule 24 response on behalf of the appellant.

15. The respondent claims that the Judge failed to provide adequate reasons for his conclusion that the appellant satisfies the financial requirement set out in paragraph E-LTRP.3.1. The rules require the appellant to provide specified evidence from the sources listed, of a specified gross annual income of at least £18,600. At paragraph [8] of the decision, the Judge records the evidence of the appellant that he had not

worked for very long but admitted that he was working when he was encountered. His evidence was that he was supported by his uncle, aunt and friends, and since 2014, by his wife. The evidence before the Tribunal was that the sponsor's income is limited to £10,800 per year, and the Judge refers to the evidence of that income, at paragraph [21] of the decision.

16. On behalf of the appellant, Mr Sharma referred to paragraph 5 of the Rule 24 response and submits that the evidence before the First-tier Tribunal in the form of bank statements and payslips demonstrated that the appellant's wife had a combined income of £21,177.84. However, he accepts that her income fluctuates, and that the P60s issued to her in respect of the tax year to 5th April 2018 disclosed a combined income of £10,843. He submits that the P60s do not reflect the level of income that the appellant's partner had, at the time the appeal was heard. He accepts that the requirements for leave to remain as a partner set out in Appendix FM and Appendix FM-SE could not be met by the appellant, and the appellant was bound to rely upon the exception set out in EX.1(b) of Appendix FM.

17. Having considered the evidence for ourselves, we are at a loss as to how the Judge was able to conclude that the financial requirement set out in Appendix FM was met. We are also at a loss to understand how the Judge reached a conclusion that the English language requirement was met. The respondent had not conceded that those requirements were met, and the Judge simply failed to provide any reasons to support his conclusion, which in any event could not, so far as we can see, have been founded on the evidence before him.

18. The respondent claims that in reaching his decision, the Judge had regard to immaterial matters such as whether the appellant might succeed in an application for entry clearance. At paragraphs [37] and [51], he refers to the perceived difficulties that the applicant may face, if he were to make an application for entry clearance to return to the UK as the partner of a British citizen. At paragraph [51] of his decision, the FtT Judge states that an application for entry clearance by the appellant "*... is not virtually certain to succeed*", whatever that means, but he was satisfied that the

appellant is able to meet most of the requirements, and the area in which the appellant is likely to face difficulty, concerns his immigration history. Quite apart from the fact that the appellant would, on the evidence that was before the Judge, be unable to satisfy other requirements set out in Appendix FM, it was in our judgment, irrational for the Judge to have in mind a perceived difficulty with an application for entry clearance arising from the appellant's immigration history. Although in Appendix FM, there is an immigration status requirement to be met in support of an application for leave to remain as a partner, there is no such requirement for entry clearance as a partner.

19. On behalf of the appellant, Mr Sharma submits that the perceived difficulty that the Judge had in mind stems not from the requirements set out in Appendix FM, but from paragraph 320(11) of the immigration rules. He submits that it is not uncommon for an application for entry clearance to be refused under that provision. The difficulty with that submission is twofold. First, the Judge made no reference to paragraph 320(11), and his language bears no resemblance to what paragraph 320(11) requires. Second, paragraph 320(11) is a discretionary ground for refusal, and before an Entry Clearance Officer ("ECO") could refuse an application on that ground, a number of pre-requisites must be met. The ECO would have to be satisfied that the appellant has contrived in a significant way to restrict the intentions of the rules by overstaying, breaching any condition attached to his leave, being an illegal entrant or using deception in an application for entry clearance, or leave to enter or remain. Furthermore, the ECO would have to be satisfied that "there are other aggravating circumstances, such as absconding, not meeting temporary admission/ reporting restrictions or bail conditions, using an assumed identity or multiple identities, switching nationality, making frivolous application or not complying with the documentation process." If, as Mr Sharma submits, the Judge had in mind paragraph 320(11) of the immigration rules, there was simply no evidence before the Judge that could rationally have led to a conclusion that an application for entry clearance was not bound to succeed, under paragraph 320(11) of the rules.

20. The focus of Mr Melvin's submissions before us was that the conclusion of the Judge that the decision to refuse leave to remain amounts to a disproportionate interference with the appellant's right to enjoyment of family and private life in the UK, is irrational, in view of the other findings made by the Judge.

21. The only ground of appeal available to the appellant was that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. The judgment of the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11 confirms that the fact that the immigration rules cannot be met, does not absolve decision makers from carrying out a full merits-based assessment outside the rules under Article 8, where the ultimate issue is whether a fair balance has been struck between the individual and public interest, giving due weight to the provisions of the Rules. Although the appellant's ability to satisfy the immigration rules was not the question to be determined by the Judge, it was capable of being a weighty, though not determinative factor, when deciding whether refusal is proportionate to the legitimate aim of enforcing immigration control. At paragraph [32] of the decision, the F*t*T Judge refers to the decision of the Supreme Court and in the final sentence, notes; "*In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control*".

22. Mr Sharma concedes before us that the appellant could not satisfy the requirements of Appendix FM unless there was a finding by the Judge that the applicant can benefit from the exception at paragraph EX.1(b). The Judge found that there are no insurmountable obstacles to the continuation of family life between the appellant and his partner, outside the UK. Mr Sharma accepts that in light of that finding made by the Judge, it follows that the requirements of the immigration rules cannot be met by the appellant. The Judge noted that he is required to attach little weight to the family or private life acquired by the appellant while his status in the United Kingdom was precarious or unlawful. The Judge identified, at [47], four factors that weighed in favour of a decision that any interference was proportionate, and at paragraph [48],

he identified two factors that weighed against a decision that the interference was proportionate.

23. The Judge referred to the public interest at paragraph [49]. He stated that "*the appellant and sponsor will be financially self-sufficient if the appellant is allowed to work*". The Judge also, erroneously, notes that "*the appellant has passed an English language test*". It is not clear what weight the Judge placed upon those factors, but it is now well established that those factors are at their highest, neutral.

24. The Judge noted, at [50], that the appellant's partner is undergoing medical treatment. The Judge stated:

> ".. even if such treatment would be available to her in Bangladesh, the suspension of such treatment while she sought re-establish herself in the country which she left many years ago would be likely to have a detrimental effect on her health…"

25. There is no reference to the medical treatment that the Judge had in mind, or the treatment that she would require in Bangladesh. The Judge does not identify the extent to which any required treatment would have to be suspended, and how that would be detrimental to the health of the appellant's partner.

26. Mr Sharma refers to the medical evidence that is to be found at pages [278] to [302] the appellant's bundle. There is evidence of the appellant's partner having been referred by her GP to the Gastroenterology team at the Dorset County Hospital and of appointments sent to the appellant to attend for further investigation. There is at page [295] of the bundle, an undated letter to the appellant from her GP informing her that recent blood tests showed that she could be at a higher risk of developing type two diabetes. The letter informs the appellant's partner of a program called "Healthier You" that will provide her with the tools to make small but significant changes to not only reduce or reverse the risk of developing type 2 diabetes, but also other conditions such as heart disease and stroke. The most up-to-date information available appears to be set out in a letter from a Consultant Nurse at the Dorset County Hospital Department of Gastroenterology, following Mrs [B]'s attendance on

29th August 2018. Overall, it appears that blood tests taken at the end of July show that she is hepatitis D and HIV negative, with normal liver function. The blood tests show a slightly raised hepatitis B viral load, but the Consultant Nurse states "*... As her liver function is normal I am not overly concerned about this result. We should, however, continue three monthly bloods as planned at her last appointment…".* That letter also states "*... She will be 40 in October and from then onwards we should offer her six monthly ultrasound scans and alphafetoprotein for primary liver cancer surveillance…".* We are unable to identify anything in that evidence to support the conclusion that the suspension of any treatment being received whilst Mrs [B] sought to re-establish herself in Bangladesh, would have a detrimental effect on her health. There was no evidence before the First-tier Tribunal as to the availability of treatment in Bangladesh.

27. It appears therefore that beyond the fact that the appellant is married to a British citizen, and the length of the appellant's residence in the UK, the Judge fails to rationally identify any exceptional circumstances that establish that the refusal of leave to remain will constitute a violation of Article 8.

28. Having carefully considered the Judge's decision and the evidence that was before the Tribunal, we are satisfied that the Judge fails to rationally identify the very strong or compelling circumstances that lead to the conclusion that the respondent's decision amounts to a disproportionate interference with the appellant's right to enjoyment of family and private life in the UK.

29. It follows that in our judgment, the decision of the Judge is infected by error of law. It cannot stand and we set it aside.

Re-making the decision

30. Directions were issued to the parties in advance of the hearing before us, reminding the parties that the Tribunal is empowered to permit new or further evidence to be admitted in the remaking of a decision, and, in any case where this facility is sought,

the parties must comply with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. No such application has been made by the appellant and we declined the oral application made by Mr Sharma to adduce further evidence. No further witness statement has been made by the appellant and his partner, and there is no updated medical evidence regarding Mrs [B]'s health. We have been provided with no explanation, let alone a satisfactory explanation, as to why any new evidence could, with reasonable diligence, not have been made available to the First-tier Tribunal on the initial appeal, and why no application to adduce evidence in accordance with the Tribunal Rules, has been made. There has been no Notice sent to the Tribunal and served upon the respondent, as required by the directions issued to the parties, indicating the nature of the evidence that the appellant wishes to reply upon. The parties were on notice of the presumption that, in the event of the Tribunal deciding that the decision of the First-tier Tribunal is to be set aside as erroneous in law, the remaking of the decision will take place at the same hearing.

31. The only ground of appeal available to the appellant is that the respondent's decision is unlawful under s 6 of the Human Rights Act 1998. As to the Article 8 claim, the burden of proof is upon the appellant to show, on the balance of probabilities, that he has established a family life with his wife, and that his exclusion from the UK as a result of the respondent's decision, would interfere with that right. It is then for the respondent to justify any interference caused. The respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances.

32. The respondent accepts that the appellant is in a genuine and subsisting relationship with his partner, who is a British Citizen. We find that the appellant enjoys family life with his partner. We also find that the decision to refuse the appellant leave to remain, may have consequences of such gravity as to engage the operation of Article 8, and we accept that the interference is in accordance with the law, and that the interference is necessary to protect the economic well-being of the country.

33. The issue in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved. As we have said in our error of law decision, the ability to satisfy the immigration rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative factor, when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control.

34. Mr Sharma submits that there are here, a number of exceptional circumstances such that the removal of the appellant from the UK would be disproportionate. He refers to the 'proximity' of the appellant's ability to meet the requirements of the rules, the length of his residence in the UK, and more importantly, the length of his wife's residence in the UK. He submits that the refusal of leave to remain impacts upon the ability of the appellant's wife to exercise her rights as a British Citizen in the UK, where she has spent the formative years of her life. He also submits that any separation whilst the appellant makes an application for entry clearance, or requiring the appellant and his wife to live together in Bangladesh, is likely to have an adverse impact upon the physical and mental health of the appellant's partner.

35. We have carefully considered the evidence before us. In his witness statement dated 4th October 2018, the appellant confirms that he came to work in the UK as the economic and political situation in Bangladesh was not good and many people were going abroad to look for work and provide for their families. He accepts that it was wrong for him to remain in the UK after his visa expired, but claims that he did so, because he felt there was no future for him in Bangladesh. He claims that he had been involved in politics in Bangladesh, and the opposition were always filing false claims against him. There is no information as to the harassment that the appellant claims that he was subjected to, or of the false cases that he claims were filed against him, and this is not an appeal against the refusal of a protection claim.

36. He describes his relationship with his wife and confirms that she was aware of his immigration status throughout. Nevertheless, they married according to Islamic law on 9th March 2015 and they then began living together. They registered the marriage

according to English Civil law on 14th August 2017. In his statement, the appellant states that he no longer has any close family in Bangladesh as his father, grandmother and stepbrother have sadly passed away since his arrival in the UK. His relationship with his stepmother is not a good one, and he has not spoken to his biological mother for a number of years. He has a brother in Bangladesh who is settled with his own family and has his own commitments. The appellant claims that he does not have a job or business and would have nowhere to live, as they have no assets or property in Bangladesh.

37. In her witness statement, Mrs [HB] confirms the background to her relationship with the appellant. She too confirms she was made aware of the appellant's immigration status from the outset. She sets out her evidence regarding the breakdown of her previous relationship, and the breakdown of her relationship with her own family. She describes the attempts she has made to rekindle her relationship with her mother, following the death of her father. She describes her mother as being completely bedbound, and needing assistance with day-to-day activities. She wishes to remain in the UK so that she can be there for her mother, and make up for the time that they lost when they did not communicate.

38. Mrs [B] confirms that they want to have a child, but she has been diagnosed with Hepatitis B for which she is receiving treatment. She claims it would be extremely difficult for her to return to Bangladesh and settle there because she has not lived in Bangladesh since she was a child. She does not have any family or personal connections with Bangladesh. Although she speaks Bengali, she cannot read or write the language and she has never previously worked in Bangladesh. She confirms that she has spent all of her formative, teenage, and adult years in the UK. She claims that her income is sufficient to meet the minimum income requirement, and it would be unfair and unjust to separate her from the appellant, just so that he can go back to Bangladesh to apply for entry clearance.

39. Whether described as the 'proximity' of the appellant's ability to meet the requirements, or a 'near miss', it is uncontroversial that the appellant cannot satisfy the requirements of the immigration rules.

40. We remind ourselves that section 117A of the Nationality, Immigration and Asylum Act 2002 requires that in considering the public interest question, we must (in particular) have regard to the considerations listed in section 117B of the 2002 Act. We acknowledge that the maintenance of effective immigration controls is in the public interest.

41. It is now well established that limited weight is generally attached to family life established in the full knowledge that its continuation in the UK is precarious. It is equally well established that Article 8 is not intended to undermine the ability of member states to control the entry of non-nationals into their territory, by enabling non-nationals to evade immigration control by establishing a family life whilst present in the UK unlawfully, and then presenting the respondent with a *fait accompli.* The authorities establish that the removal of a non-national family member is incompatible with Article 8 only in exceptional circumstances.

42. In our search for the exceptional circumstances here, we have already set out at paragraph [26] above, the evidence before us regarding the health of Mrs [B] and the limited evidence that is before the Tribunal regarding the treatment that she has received. There is no evidence before us regarding the medical treatment that is now being received by Mrs [B]. She has previously been under review by the Dorset County Hospital Department of Gastroenterology, and although blood tests revealed a slightly raised Hepatitis B level, because of the normal liver function, it seems that the slightly raised Hepatitis B level, was of no significant concern. Subsequent blood tests confirmed that Mrs [B] is suffering from chronic Hepatitis B. She was referred to Gynaecology Services for specialist advice regarding her failure to become pregnant. There is no evidence before us that any follow-up or treatment that is required by Mrs [B], would not be available in Bangladesh.

43. The appellant has not sought to challenge the finding of the Judge that there are no insurmountable obstacles to the continuation of family life between the appellant and his partner, outside the UK. Equally the appellant has not sought to challenge the finding of the Judge that there are no very significant obstacles to the appellant's integration into Bangladesh. In reaching those findings, the Judge had considered the connections that the appellant and his wife have with Bangladesh, their respective age when they came to the UK, and their social and cultural connections to Bangladesh. The Judge also had in mind the evidence given by Mrs [B] regarding the breakdown of her previous marriage, and her evidence regarding her relationship with her sister in Bangladesh, and the contact that she now has with her mother by visits and by telephone.

44. Whilst the appellant and his wife might prefer to continue their married life together in the UK, that does not equate to a right to do so in law. We accept that Mrs [B] is a British citizen and we can well understand her desire to remain in the UK. However, she entered into a relationship and marriage with the appellant, knowing of his immigration status and must therefore have known that it may not be possible for them to continue living together in the UK. She must have been aware of the possibility that they would have to continue their married life together in Bangladesh, or that they would face a period of separation if the appellant were not permitted to remain in the UK, and had to return to Bangladesh to make an application for entry clearance. It is of course open to Mrs [B] to join her husband in Bangladesh, whilst any application for entry clearance is made. We note the appellant's evidence is that his wife had returned to Bangladesh once, to attend the funeral of the appellant's father, and stayed for a month. We reject the claim that the appellant and Mrs [B] have no family connections to Bangladesh. The appellant has his stepmother and a brother, and Mrs [B] has a sister in Bangladesh. They could in our judgement, turn to their family for some short-term support whilst they re-establish themselves in Bangladesh, or whilst the appropriate application for entry clearance is made by the appellant.

45. On the evidence before us, and considering the unchallenged findings made by the F*t*T Judge, in our judgment there are no exceptional circumstances capable of establishing that the removal of the appellant amounts to a disproportionate interference with the appellant's right to enjoyment of family and private life in the UK.

46. Having carefully considered the evidence before us, and taking all the relevant factors into account including those in S117B of the 2002 Act, we find that the decision to refuse the application for leave to remain is not disproportionate to the legitimate aim of immigration control. Accordingly, we dismiss the appeal on Article 8 grounds.

47. Having set aside the decision of the First-tier Tribunal, we remake the decision, dismissing the appellant's appeal on Article 8 grounds.

Signed Date 19th July 2019

Upper Tribunal Judge Mandalia